REMARKS/ARGUMENTS

Claims 1-55 are pending in the present application.

This Amendment is in response to the Office Action mailed October 1, 2008. In the Office Action, the Examiner rejected claims 20-21, 25-29, 33,34, and 38-40 under 35 U.S.C. §102(e); claims 1-19, 22-24, 30-32, and 35-37 under 35 U.S.C. §103(a); claims 41-55 under 35 U.S.C. §103(a). Applicant has amended claims 45 and 50. Reconsideration in light of the amendments and remarks made herein is respectfully requested. .

Claim Objection

In the Office Action, the Examiner objected to claims 45 and 50 due to minor informalities. Applicant has amended claims 45 and 50 to correct the minor informalities.

Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 20-21, 25-29, 33,34, and 38-40 under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0078174 A1 issued to Sim et al. ("Sim"). Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a prima facie case of anticipation.

Sim discloses a method and apparatus for automatically adapting a node in a network. A content provider uploads and/or manages large payload files in the scalable content delivery network (SCDN) 500 through its content provider client (CPC) 530 (Sim, paragraph [0076], lines 7-9; paragraph [0080], lines 4-6). A content provider uses content management applications running on a Content Provider Client system to upload a content and file metadata onto a Content Management Server (CMS) (Sim, paragraph [0094], lines 1-6).

Sim does not disclose, either expressly or inherently, at least one of: (1) receiving a plurality of multimedia asset data files from a plurality of content providers; (2) receiving metadata associated with the plurality of multimedia asset data files from at least one of the plurality of content providers and a plurality of MSOs; (3) receiving business rules provided by the MSO, the business rules corresponding to the multimedia asset data file and being identified with particular MSOs; (4) coordinating uploading the multimedia asset data files to video-on-demand ("VOD") servers maintained by the MSOs using an asset locator assigned to each

multimedia asset data file; and (5) tracking uploading the multimedia asset data files, as recited in claim 20; or (6) coordinating uploading the metadata and the content to a server for delivery to an end user according to scheduling and business rules provided by a multiple service or systems operator (MSO), as recited in claim 25.

(1) <u>receiving a plurality of multimedia asset data files from a plurality of content providers</u>.

<u>Sim</u> merely discloses distributing large payload files (<u>Sim</u>, paragraph [0072], lines 1-3; paragraph [0076], lines 7-9; paragraph [0080], lines 4-6), not multimedia asset data files. A large payload file may merely include a large video file. It may not include the basic elements and the basic metadata associated with each element.

(2) <u>receiving metadata associated with the plurality of multimedia asset data files from at least one of the plurality of content providers and a plurality of MSOs</u>.

<u>Sim</u> merely discloses file metadata as data related to the management of the files being stored, transferred, and manipulated in the network (<u>Sim</u>, paragraph [0094], lines 1-3), not the metadata associated with the plurality of multimedia asset data files from at least one of the plurality of content providers and a plurality of MSOs.

(3) <u>receiving business rules provided by the MSO, the business rules corresponding to the multimedia asset data file and being identified with particular MSOs</u>.

The Examiner contends that <u>Sim</u> discloses the above claimed element, citing paragraphs [0186] – [0204]. Applicant notes that the Examiner cites 19 paragraphs covering three columns in <u>Sim</u> to support the Examiner's argument without specifically pointing out the lines or columns that specifically disclose the elements. The Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate. See MPEP 706.02(j). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the Applicant has the opportunity to provide evidence of a patentability and otherwise reply completely at the earliest opportunity. See MPEP 706. Applicant respectfully requests the Examiner to specifically point out the relevant teaching in Sim that disclose the business rules provided by the MSO.

<u>Sim</u> merely discloses a "popularity" index of a file (<u>Sim</u>, paragraph [0187], lines 1-4), not business rules provided by the MSO. The "popularity" index is a prediction of the likelihood of

the file to be accessed in the near future. It does not represent a business rule. The business rules are rules related to the business aspect of the multimedia asset files such as ratings filters, pricing rules, etc.

Furthermore, <u>Sim</u> merely discloses the popularity index being provided by the content provider, not by the multiple service/system operator (MSO). A content provider is not the same as an MSO. A content provider provides the content, but the content provider does not provide services related to the distribution of the content as the MSO.

(4) <u>coordinating uploading the multimedia asset data files to video-on-demand ("VOD") servers maintained by the MSOs using an asset locator assigned to each multimedia asset data file</u>.

<u>Sim</u> merely discloses a content provider uses content management applications running on a Content Provider Client system to upload a content and file metadata onto a Content Management Server (CMS) (<u>Sim</u>, paragraph [0094], lines 1-6), not coordinating uploading the multimedia asset data files to video-on-demand ("VOD") servers maintained by the MSOs. Merely uploading the content is not the same as coordinating uploading.

Furthermore, <u>Sim</u> merely discloses uploading the content to a Content Management Server (CMS) (<u>Sim</u>, paragraph [0094], lines 1-6), not to a video-on-demand (VOD) server. A CMS merely gives the content provider a vehicle to upload large files (e.g., video) to the distribution centers (<u>Sim</u>, paragraph [0080], lines 4-6). The CMS does not distribute the video on demand, or based in the demand of the viewers.

Moreover, <u>Sim</u> merely discloses using content management applications that run on a Content Provider Client system to upload a content (<u>Sim</u>, paragraph [0094], lines 1-6), not using an asset locator assigned to each multimedia asset data file. The content management application merely performs the uploading function of the file provided by the content provider.

(5) <u>tracking uploading the multimedia asset data files</u>.

<u>Sim</u> merely discloses a content provider uses content management applications running on a Content Provider Client system to upload a content and file metadata onto a Content Management Server (CMS) (<u>Sim</u>, paragraph [0094], lines 1-6), not tracking uploading the multimedia asset data files. Uploading merely transfers the content to the CMS. It does not track the file. It does not track the location and status of the file.

(6) <u>coordinating uploading the metadata and the content to a server for delivery to an end
user according to scheduling and business rules provided by a multiple service or systems
operator (MSO).</u>

As discussed above, <u>Sim</u> merely discloses a content provider uses content management
applications running on a Content Provider Client system to upload a content and file metadata
onto a Content Management Server (CMS) (<u>Sim</u>, paragraph [0094], lines 1-6), not coordinating
uploading the metadata and the content to a server for delivery to an end user according to
scheduling and business rules provided by a multiple service or systems operator (MSO).
Uploading merely transfers the content to the CMS. It does not coordinate uploading for
delivery to an end user according to scheduling and business rules provided by a MSO. As
discussed above, <u>Sim</u> does not disclose scheduling and/or business rules. Therefore, <u>Sim</u> cannot
and does not disclose coordinate uploading for delivery to an end user according to scheduling
and business rules. Furthermore, since <u>Sim</u> does not disclose an MSO, <u>Sim</u> cannot and does not
disclose the business rules being provided by an MSO.

To anticipate a claim, the reference must teach every element of a claim. "A claim is
anticipated only if each and every element as set forth in the claim is found, either expressly or
inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of
California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention
must be shown in as complete detail as is contained in the…claim." *Richardson v. Suzuki Motor
Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989). Since the Examiner failed to
show that <u>Sim</u> teaches or discloses any one of the above elements, the rejection under 35 U.S.C.
§102 is improper.

The Examiner bears the burden of presenting at least a prima facie case of anticipation.
In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138-139 (Fed. Cir. 1986); *In re Wilder*, 429
F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). Only if that burden is met, does the burden of
going forward shift to the applicant. *In re King*, 801 F.2d at 1327, 231 USPQ at 138-139; *In re
Wilder*, 429 F.2d at 450, 166 USPQ at 548. Once a prima facie case is established and rebuttal
evidence is submitted, the ultimate question becomes whether, based on the totality of the record,
the Examiner carried his burden of proof by a preponderance. See *In re Oetiker*, 977 F.2d 1443,
1445. 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If the Examiner fails to establish a prima facie

case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5
USPQ2d 1596, 1598 (Fed. Cir. 1988).

Therefore, Applicant believes that independent claims 20 and 25 and their respective
dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant
respectfully requests the rejection under 35 U.S.C. §102(e) be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-19, 22-24, 30-32, and 35-37 under
35 U.S.C. §103(a) as being unpatentable over <u>Sim</u> in view of U.S. Publication No. 2003/0020744
A1 issued to Ellis et al. ("<u>Ellis '744</u>"); and claims 41-55 under 35 U.S.C. §103(a) as being
unpatentable over <u>Sim</u> in view of U.S. Publication No. 2005/0283800 A1 issued to Ellis et al.
("<u>Ellis '800</u>"). The Examiner also cites U.S. Publication No. 2005/0149964 A1 issued to
Thomas et al. ("<u>Thomas</u>") and U.S. Publication No. 2003/0149988 A1 issued to Ellis et al.
("<u>Ellis '988</u>"). Applicant respectfully traverses the rejection and submits that the Examiner has
not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First,
there must be some suggestion or motivation, either in the references themselves or in the
knowledge generally available to one of ordinary skill in the art, to modify the reference or to
combine reference teachings. Second, there must be a reasonable expectation of success.
Finally, the prior art reference (or references when combined) must teach or suggest all the claim
limitations. *MPEP §2143, p. 2100-126 to 2100-130 (8th Ed., Rev. 5, August 2006)*. Applicant
respectfully submits that there is no suggestion or motivation to combine their teachings, and
thus no *prima facie* case of obviousness has been established.

Furthermore, the Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459
(1966), stated: "Under § 103, the scope and content of the prior art are to be determined;
differences between the prior art and the claims at issue are to be ascertained; and the level of
ordinary skill in the pertinent art resolved. Against this background, the obviousness or
nonobviousness of the subject matter is determined." <u>MPEP 2141</u>. In *KSR International Co. vs.
Teleflex, Inc.*, 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that "[o]ften, it will be
necessary for a court to look to interrelated teachings of multiple patents; the effects of demands

known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order <u>to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue</u>." The Court further required that an explicit analysis for this reason must be made. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR 127 S.Ct.* at 1741, quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In the instant case, Applicant respectfully submits that there are significant differences between the cited references and the claimed invention and there is no apparent reason to combine the known elements in the manner as claimed, and thus no *prima facie* case of obviousness has been established.

    1. <u>Claims 1-19, 22-24, 30-32, and 35-37:</u>

    <u>Sim</u> discloses a method and apparatus for automatically adapting a node in a network as discussed above.

    <u>Ellis '744</u> discloses a client-server electronic program guide. A program guide server 25 may record the viewing histories of users (<u>Ellis '744</u>, paragraph [0107], lines 1-3). Program guide systems may track user viewing activities and advertisement usage (<u>Ellis '744</u>, paragraph [0108], lines 9-10).

    <u>Thomas</u> discloses a program guide system with monitoring or advertisement usage and user activities. The user is provided with an opportunity to select the geographical area for which real-time ratings information is desired (<u>Thomas</u>, paragraph [0079], lines 3-6). Each user may set up a profile with a different set of favorite channels (<u>Thomas</u>, paragraph [0072], lines 2-3).

    <u>Sim</u>, <u>Ellis '744</u>, and <u>Thomas</u>, taken alone or in any combination, do not disclose or render obvious, at least one of: (1) receiving metadata associated with a multimedia asset data file provided by at least one of a content provider and a multiple service or systems operator ("MSO"), the multimedia asset data file being delivered to end users upon requested; (2) validating the multimedia asset data file and the associated metadata by determining if the multimedia asset data file and the associated metadata comply with business rules provided by the MSO; (3) coordinating delivering the multimedia asset data file and associated metadata to a

video-on-demand ("VOD") server maintained by the MSO, wherein coordinating delivering comprises (3a) tracking distributing the multimedia asset data file from the content provider to the MSO, and (3b) tracking uploading the multimedia asset data file from the MSO to the VOD server; and (4) providing usage reports relating to usage of multimedia asset data files by end users of the MSO.

(1) receiving metadata associated with a multimedia asset data file provided by at least one of a content provider and a multiple service or systems operator ("MSO"), the multimedia asset data file being delivered to end users upon requested.

As discussed above in the 35 U.S.C. §102(e) rejections, Sim does not disclose or render obvious receiving metadata associated with a multimedia asset data file provided by at least one of a content provider and a MSO.

(2) validating the multimedia asset data file and the associated metadata by determining if the multimedia asset data file and the associated metadata comply with business rules provided by the MSO.

Sim merely discloses setting the initial "popularity" index (Sim, paragraph [0187], lines 1-2), adjusting the "popularity" index (Sim, paragraph [0188], lines 3-4), collecting statistics and task/transaction logs (Sim, paragraph [0190], lines 7-8), storing the databases (Sim, paragraph [0207], lines 4-8), including content provider information (Sim, paragraph [0209], lines 1-3), and holding metadata related to block files (Sim, paragraph [0213], lines 1-6). None of these is related to validating the multimedia asset data file and the associated metadata. The popularity index is a prediction of the likelihood of the file to be accessed (Sim, paragraph [0187], lines 3-4). Adjusting this index therefore does not have anything to do with validating the multimedia asset data file. Collecting statistics may be used to generate alarms, but it cannot validate the multimedia asset data file because the statistics are related to the network traffic and not related to the asset data file. Furthermore, as discussed above, since Sim does not disclose business rules, Sim does not and cannot disclose determining if the multimedia asset data file and the associated metadata comply with business rules provided by the MSO.

(3) coordinating delivering the multimedia asset data file and associated metadata to a video-on-demand ("VOD") server maintained by the MSO, wherein coordinating delivering comprises (3a) tracking distributing the multimedia asset data file from the content provider to

the MSO, and (3b) <u>tracking uploading the multimedia asset data file from the MSO to the VOD</u>
<u>server</u>.

As discussed above under the U.S.C. §102(e) rejections, <u>Sim</u> does not disclose or render
obvious a VOD server. Furthermore, since <u>Sim</u> does not disclose an MSO and/or a VOD server,
<u>Sim</u> does not disclose coordinating delivering that comprises tracking distributing the
multimedia asset data file from the content provider to the MSO and tracking uploading the
multimedia asset data file from the MSO to the VOD server.

(4) <u>providing usage reports relating to usage of multimedia asset data files by end users</u>
<u>of the MSO</u>.

The Examiner contends that <u>Sim</u> discloses providing usage information relating to most
frequently accessed files, citing paragraphs [0190], [0191], [0197] – [0202], [0217], and [0253].
However, the cited excerpts do not provide support for the Examiner's contention. Paragraph
[0190] merely discloses collecting statistics and task/transaction logs from the local devices and
servers. Transactions from local devices and servers do not correspond to usage of files.
Paragraph [0191] merely discloses forwarding alarms to the trap agent if the readings exceed the
threshold settings. These threshold settings correspond to the devices and servers, not the
uploaded data files. Paragraphs [0197] – [0202] merely disclose a data repository, not usage
reports. A data repository stores data. It does not provide a report on the usage. Paragraph
[0217] merely discloses a storage management subsystem watching the storage. Watching the
storage is to determine how much storage is available. It does not provide a report. Paragraph
[0253] merely discloses caching the file metadata for only the most frequently accessed files and
updates the cache based on the recent usage information. Caching is to store the files in fast
memory. It does not generate a usage report. Furthermore, the VFCS server only cache the
metadata due to its limited memory (<u>Sim</u>, paragraph [0253], lines 6-8), not the multimedia asset
data files.

The Examiner admits that <u>Sim</u> does not disclose usage reports relating to usage of
multimedia asset data files by end users of the MSO (<u>Office Action</u>, page 9, lines 15-16). But
the Examiner contends that <u>Ellis '744</u> and <u>Thomas</u> disclose this aspect (<u>Office Action</u>, page 9,
lines 17-21). Applicant respectfully disagrees for the following reasons.

Ellis '744 merely recording the viewing histories of users (Ellis '744, paragraph [0107], lines 1-3) or tracking user viewing activities and advertisement usage (Ellis '744, paragraph [0108], lines 9-10). Viewing histories relate to the program viewing. It does not correspond to usage of the multimedia asset data files such as listing of multimedia content that has been licensed, content that is available for distribution to the users, the estimated time an asset data file will be delivered to the MSO, etc.

Similarly, Thomas merely discloses selecting the geographical area for which real-time ratings information is desired (Thomas, paragraph [0079], lines 3-6), or setting up a user profile with a different set of favorite channels (Thomas, paragraph [0072], lines 2-3). None of these is related to usage of the multimedia asset data files as described above.

Furthermore, neither Ellis '744 nor Thomas discloses providing usage reports. Recording viewing activities or setting user profiles does not provide a usage report.

2. Claims 41-55:

Sim is discussed above.

Ellis '800 discloses an interactive television program guide system that serves as a portal. A program guide application 70 may have an associated API 72 that allows the program guide application 70 to serve as a portal for non-program guide applications (Ellis '800, paragraph [0070, lines 1-4)

Sim and Ellis '800, taken alone or in any combination, do not disclose or render obvious, at least one of: (1) an external layer to interface to an application client; (2) a component programmatic application program interface (API) coupled to the external layer to interface to a plurality of engines comprising: a workflow engine to manage workflows of ingesting a content and metadata associated with the content provided by a content provider, coordinating distribution of the metadata and the content, and coordinating uploading the metadata and the content to a server for delivery to an end user according to scheduling and business rules provided by a multiple service or systems operator (MSO); and (3) a relational database to store the metadata.

The Examiner contends that Sim discloses a layer interface to application of content provider citing Figures 5 and 7, paragraphs [0076], [0080], and [0263] – [0269]. Applicant respectfully disagrees. The rejected claims recited components of a content management system.

None of the cited figures or paragraphs discloses components of a content management system, or a workflow engine that performs the tasks as recited in the rejected claims. Figure 5 merely shows a content management system 570 but does not show its components. Figure 7 merely shows a distribution center (Sim, paragraph [0081], lines 1-3), not a content management system. Paragraphs [0263] – [0269] merely disclose content management application tools (Sim, paragraph [0263], line 1; paragraph [0264], lines 1-3). As discussed above, none of these tools discloses coordinating uploading the metadata and the content to a server for delivery to an end user according to scheduling and business rules provided by a multiple service or systems operator (MSO).

Furthermore, Ellis '800 merely discloses a program guide application 70 and an associated API 72 that allows the program guide application 70 to serve as a portal for non-program guide applications (Ellis '800, paragraph [0070, lines 1-4). A program guide application merely provides program information to television viewers. It is not a content management system. Furthermore, none of these non-program guide applications corresponds to uploading the metadata and the content to a server according to scheduling and business rules provided by a multiple service or systems operator (MSO).

The Examiner failed to establish a prima facie case of obviousness and failed to show there is teaching, suggestion, or motivation to combine the references. When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Col, Inc.,* 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). "When determining the patentability of a claimed invention which combined two known elements, 'the question is whether there is something in the prior art as a whole suggest the desirability, and thus the obviousness, of making the combination.'" *In re Beattie,* 974 F.2d 1309, 1312 (Fed. Cir. 1992), 24 USPQ2d 1040; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.,* 730 F.2d 1452, 1462, 221 USPQ (BNA) 481, 488 (Fed. Cir. 1984). To defeat patentability based on obviousness, the suggestion to make the new product having the

claimed characteristics must come from the prior art, not from the hindsight knowledge of the invention. *Interconnect Planning Corp. v. Feil*, 744 F.2d 1132, 1143, 227 USPQ (BNA) 543, 551 (Fed. Cir. 1985). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the Examiner to show a motivation to combine the references that create the case of obviousness. In other words, the Examiner must show reasons that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the prior elements from the cited prior references for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1996), 47 USPQ 2d (BNA) 1453. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or implicitly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973. (Bd.Pat.App.&Inter. 1985). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *In re Mills*, 916 F.2d at 682, 16 USPQ2d at 1432; *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992), 23 USPQ2d 1780.

Moreover, the Examiner failed to establish the factual inquires in the three-pronged test as required by the *Graham* factual inquires. There are significant differences between the cited references and the claimed invention as discussed above. Furthermore, the Examiner has not made an explicit analysis on the apparent reason to combine the known elements in the fashion in the claimed invention. Accordingly, there is no apparent reason to combine the teachings of Sim, Ellis '744, Thomas, and Ellis '800 in any combination.

In the present invention, the cited references do not expressly or implicitly disclose any of the above elements. In addition, the Examiner failed to present a convincing line of reasoning as to why a combination of Sim, Ellis '744, Thomas, and Ellis '800 is an obvious application of video-on-demand (VOD) management system or an explicit analysis on the apparent reason to combine Sim, Ellis '744, Thomas, and Ellis '800 in the manner as claimed.

Therefore, Applicants believe that independent claims 1, 20, 25, 41, and 46 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejections under 35 U.S.C. §103(a) be withdrawn.

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Conclusion

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: January 30, 2009   By / THINH V. NGUYEN /

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